

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF SHORELINE
VARIANCE PERMITS DENIED AND
GRANTED BY KING COUNTY
TO DAN LOHSE,

W. WM. MOHR, JR.,

Appellant,

v.

KING COUNTY AND DAN LOHSE,

Respondents.

SHB No. 82-27 & 82-28

DAN LOHSE,

Appellant,

v.

KING COUNTY,

Respondent.

SHB No. 82-28

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of shoreline variance permits denied and granted by King County to Dan Lohse, came on for hearing before the Shorelines Hearings Board, Gayle Rothrock, Chairman, David Akana, Larry Faulk, A. M. O'Meara, Nancy Burnett and Rodney H. Kerslake, Board members convened at Lacey, Washington on October 26, 1982. William A. Harrison, Administrative Law Judge, presided.

Appellant Dan Lohse was represented by his attorney, Thomas Dixon. Appellant H. Wm. Mohr, Jr., appeared and represented himself. Respondent King County appeared by Fred A. Caseburg, Deputy Prosecuting Attorney. Court reporter Diane Lachman recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Shorelines Hearings Board
3 makes these

4 FINDINGS OF FACT

5 I

6 This matter arises on the shoreline of King County near Three-Tree
7 Point.

8 II

9 The shoreline in the area is bulkheaded, with level area just
10 landward of the bulkhead. This level area then changes to a steep
11 slope. Road access is along the top of the slope.

12 III

13 Appellant, Dan Lohse, purchased a modest home located close to the
14 bulkhead in 1975. His lot, like that of his neighbor to the south,
15 closely circumscribes his home in contrast to the larger lots of
16 neighbors. Also, the steep slope landward of his home prevents
17 substantial expansion in that direction.

18 IV

19 Appellant, Lohse, remodeled his home in 1976 so that the house was
20 located 9 feet landward of the ordinary high water mark (the bulkhead)
21 and a deck was extended to and beyond the bulkhead. In 1976 the King
22 County Shoreline Master Program (KCSMP) did not require a setback from
23 the bulkhead on Mr. Lohse's lot. It did and does prohibit the
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1 portions of the deck beyond (waterward of) the bulkhead, which Mr.
2 Lohse has agreed to remove at King County's request.

3 V

4 Presently, the KCSMP provides that single family development shall
5 be set back 20 feet landward of the ordinary high water mark. Section
6 409(2)(c), p. 17.

7 The policy of the KCSMP is that shoreline structures should be
8 sited and designed to minimize view obstruction. Policy No. 3 of
9 Objective 4, p. 9.

10 VI

11 On December 11, 1981, Mr. Lohse applied to King County for a
12 shoreline variance permit to further remodel his home, including the
13 addition of another story. This was denominated as the third story by
14 King County because the existing home has two levels, the lower being
15 a daylight basement. The total proposal would increase square footage
16 of interior space from about 1600 square feet to 2500 square feet.
17 This assumes that the third story would be positioned 11-1/2 feet
18 landward of the bulkhead as shown in scale drawings accompanying the
19 application.

20 VII

21 The home of Mr. Lohse's neighbor to the north, Mr. H. William
22 Mohr, Jr., is set back some 80 feet from the bulkhead. The proposed
23 third story of Mr. Lohse's home would obstruct the water view now
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1 enjoyed from the second story of the Mohr home. Mr. Mohr is also
2 proposing to add a third story which will afford a view that
3 Mr. Lohse's proposal would not obstruct.

4 VIII

5 A 30 foot tall house is a permitted use on Mr. Lohse's property,
6 even if it blocks a neighbor's view, provided it meets all required
7 setbacks. Mr. Mohr contends that if a shoreline setback variance is
8 granted, the height of the entire house may not be greater than now
9 exists.

10 IX

11 Were a shoreline variance granted to Mr. Lohse to locate his third
12 story within the 20 foot shoreline setback, Mr. Lohse's three
13 neighbors to the south could justifiably make a request for like
14 action.

15 X

16 The criteria for shoreline variance is that promulgated by
17 Department of Ecology at WAC 173-14-150. KCSMP Section 804(1), p.
18 47. This provides, in pertinent part:

19 WAC 173-14-150 REVIEW CRITERIA FOR VARIANCE PERMITS.
20 The purpose of a variance permit is strictly limited
21 to granting relief to specific bulk, dimensional or
22 performance standards set forth in the applicable
23 master program where there are extraordinary or
24 unique circumstances relating to the property such
25 that the strict implementation of the master program
26 would impose unnecessary hardships on the applicant
27 or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances should be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), except within those areas designated by the department as marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following.

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program.

(b) That the hardship described in WAC 173-14-150(2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

(c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

(d) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

(e) That the public interest will suffer no substantial detrimental effect.

(3)

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments in the area where similar circumstances exist the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce substantial adverse effects to the shoreline environment.

(5)

XI

On July 19, 1982, after public hearing, King County granted a shoreline variance permit to Mr. Lohse for remodeling the existing two levels of his home. King County denied a shoreline variance for the proposed third story, thus allowing it to be built only to a point 20 feet landward of the bulkhead rather than 11-1/2 feet as proposed. King County's action would allow Mr. Lohse to improve and increase the interior space of his home from about 1600 square feet to approximately 2000 square feet, and would minimize the obstruction of view from Mr. Mohr's neighboring home. Both Mr. Lohse and Mr. Mohr request review of King County's action.

XIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board enters these

CONCLUSIONS OF LAW

I

The strict application of the 20 foot setback required by the KCSMP would significantly interfere with Mr. Lohse's residential use of his property. This is the result of both the small lot size and natural features, and is not due to Mr. Lohse's own actions. Mr. Lohse's proposal is consistent with WAC 173-14-150(2)(a) and (b).

II

Mr. Lohse's proposal for a new third story within the 20 foot shoreline setback causes an adverse effect, view blockage, to the adjacent property of Mr. Mohr. This portion of the proposal is inconsistent with WAC 173-14-150(2)(c). Mr. Lohse's proposal to remodel the existing two levels of his home does not cause an adverse effect to adjacent property and is consistent with WAC 173-14-150(2)(c).

III

To allow a new third story within the shoreline setback in this case is more than the minimum necessary to afford relief from the hardship created by application of the shoreline setback. This would violate WAC 173-14-150(2)(d). The minimum necessary variance to afford relief, consistent with WAC 173-14-150(2)(d), is a variance to remodel the existing two levels of the home now within the shoreline setback.

IV

To allow a new third story within the shoreline setback would harm the public interest by inducing a cumulative impact from additional requests for like actions along the shoreline in question. This would produce substantial adverse effect inconsistent with WAC 173-14-150(2)(e) and (4).

V

King County's action does not prevent a new third story from being added to Mr. Lohse's home landward of the 20 foot shoreline setback and within the 30 foot maximum height limitation. Mr. Mohr's contention is without merit.

VI

In summary, the action of King County in denying a variance for a new third story within the shoreline setback while granting a variance to remodel the existing two levels within the setback is consistent with WAC 173-14-150, and should be affirmed.

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The action of King County denying and granting a shoreline variance permit to Dan Lohse is hereby affirmed.

DONE at Lacey, Washington this 31st day of November, 1982.

SHORELINES HEARINGS BOARD


GAYLE ROTHROCK, Chairman



DAVID AKANA, Lawyer Member


LAWRENCE J. PAULK, Member


A. M. O'NEARA, Member


NANCY R. BURNETT, Member


RODNEY E. KERSLAKE, Member


WILLIAM A. HARRISON
Administrative Law Judge